42.

SUPREME COURT OF THE UNITED STATES.

No. 153.

CHARLES DIAMOND, PLAINTIFF,

vs.

FREDERIC H. SOMMERS.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT U. S. FOR EAST LOUISIANA.

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Be it remembered, that on the 22nd day of April, A. D. 1844, Charles Diamond, by his attorney, Schmidt, came into court and filed the following petition, to wit:

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit, sitting in New Orleans:

The petition of Charles Diamond, a citizen of the State of Louisiana, respectfully represents:

That Frederick H. Sommers, an alien, residing within the jurisdiction of this honorable court, is justly indebted to your petitioner in the sum of five hundred and fifty dollars, for this—that the said Frederick H. Sommers did, on the 1 January, 1844, sign and execute his promissory note, by which he promised to pay on the 1st of April, then next following, to the order of your petitioner, the sum of five hundred and fifty dollars, for value received, as per said note of hand, hereto annexed, will fully appear. Your petitioner further avers, that the said Frederick H. Sommers, although thereto amicably requested, has wholly neglected to pay the aforesaid note, or any part thereof, at maturity and since.

Wherefore your petitioner prays, that due process of law issue to compel the said Sommers to appear before this honorable court, and to answer this petition, and that after due proceedings, he be condemned to pay your petitioner the aforesaid sum of five hundred and fifty dollars, with interest and costs; and he further prays for general relief.

Signed, SCHMIDT, *of counsel.*

NEW ORLEANS, *Jan'y* 1, 1844.

On the first day of April next, I promise to pay to the order of Charles Diamond, the sum of five hundred and fifty dollars, for value received.

(Signed) FRED'K H. SOMMERS.

And on the 22d day of April, 1844, the following citation was issued from the clerk's office:

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

Charles Diamond, vs. Frederick H. Sommers. } No. 1,231.

You are hereby commanded to summon Frederick H. Sommers, an alien, to comply with the demand of Charles Diamond, citizen of the State of Louisiana, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, fifth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defend

ant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of June, 1844.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Or-
[L. S.] leans, in the said eastern district of Louisiana, the 22d day of April, in the year of our Lord one thousand eight hundred and forty-four, and of the independence of the said United States of America the sixty-eighth year.

For D. N. HENNEN, *Clerk*.
Signed, J. Q. A. HOIT, *Dep. clerk*.

Marshal's return.—Received this 22d day of April, 1844, and on the 22d day of April, 1844, served copies of the within citation, plaintiff's petition and documents annexed, on the within named Frederick H. Sommers, in the manner following, to wit, by handing the same to him in person in the city of New Orleans.

Signed, A. S. ROBERTSON, *U. S. M.*
By W. K. STILES, *D'y U. S. M.*

And afterwards, to wit, on the 25th day of April, 1844, the following exception was filed.

Charles Diamond,
vs.
Frederick H. Sommers.

In the United States circuit court for the fifth judicial circuit, sitting at New Orleans.

Now comes into court, Frederick H. Sommers, the defendant in this case, in obedience to the citation served upon him at the suit of Chs. Diamond; and he excepts to, and expressly denies, the jurisdiction of this honorable court, on the ground that he is not an alien, as alledged in the plaintiff's petition; but that, on the contrary, although born in a foreign country, to wit, in the kingdom of Hanover, he caused himself to be naturalized, and was actually naturalized a citizen of the United States, by the honorable Judge B. C. Elliott, then judge of the city court of Lafayette, as appears from the copy of certificate to him delivered by the clerk of said court, hereto annexed; and this defendant pleads in support of his exception, that, being a citizen of the State of Louisiana, as well as the said plaintiff, he is only amenable to the State tribunals for the matters litigated in the present suit, and that this honorable court cannot, by law, entertain any jurisdiction over him, in the premises. Defendant, therefore, prays that this his exception be maintained, and that plaintiff's petition be dismissed, with costs, and for general relief, &c.; and as in duty bound, &c.

(Signed) SOULE,
THOS. SLIDELL.
PERRIN & WALKER,
Atty's for def't.

UNITED STATES OF AMERICA,

The State of Louisiana, parish of Jefferson, city court of the city of Lafayette, to all to whom these presents may come, greeting :

Whereas, at the city court of the city of Lafayette, held in the city of Lafayette, this fourth day of September, anno domini one thousand eight hundred and forty-one, and in the sixty-sixth year of the independence of the United States of America, Frederick Hilmer Sommers, late of the kingdom of Hanover, came and appeared in said court, and made application to be made a citizen of the United States of America, and having complied with all the conditions and requisites of the acts of Congress in such case made and provided, for establishing an uniform rule of naturalization, and the oath to support the Constitution of the United States of America, and to renounce all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, being administered unto him in open court—present, the honorable B. C. Elliott, judge of said court, he, the said Frederick H. Sommers is by virtue thereof and the premises, declared and enrolled a citizen of the United States.

In testimony whereof I have hereunto affixed the seal of said court, { Seal of the city court of Lafayette. } at the city of Lafayette, this fourth day of September, in the year of our Lord one thousand eight hundred and forty-one, and the sixty-sixth of the independence of the United States of America.

(Signed) A. PHELPS, *Clerk.*

And afterwards, on the first day of May, 1844, the following replication was filed :

Circuit court of the United States for 5th judicial circuit.

Charles Diamond, }
vs. }
Frederick H. Sommers. }

The plaintiff in this suit, by G. Schmidt, his attorney, and by way of traverse and replication to defendant's exception to his petition and the allegation of said def't that he is a naturalized citizen of Louisiana, says :

That it is not true that the said Frederick H. Sommers is, as he avers, a naturalized citizen of the United States, and that the document on which he relies as furnishing proof of his pretended naturalization, is null and void and of no effect, and affords no evidence whatever, in his behalf, for the following causes and reasons, viz :

1st. Because the city court of Lafayette is not a court of record within the meaning of the acts of Congress providing for a uniform rule of naturalization.

2d. Because, even if it were, it is not true that the pretended certificate of naturalization is in the form required by the aforesaid acts of Congress, nor that the said Sommers has complied with the formalities required to entitle him to letters of naturalization, and that these formalities do not appear as they ought, on the face of the certificate.

3d. Because the said act of naturalization was never recorded in due

form and as required by law, and there is no original record of which said pretended act, relied on by def't, is a copy. Should all the preceding causes and reasons prove insufficient to annul defendant's pretensions, then the plaintiff avers and charges—

That the pretended letter or act of naturalization, exhibited by def't, was obtained by fraud, malfeasance and false swearing, on the part of the parties thereto, and that said act is null and void, to all intents and purposes, on account of the fraud and ill practices used in obtaining the same; and more particularly because he avers that it is not true that the said Sommers has resided for five consecutive years within the United States, nor that he has taken the oath of allegiance to the U. S. within two years next preceding the date of his pretended naturalization, and that no sufficient and legal evidence was exhibited to the city court of Lafayette of these facts; but that the judge of said court, forgetful of his duty and oath of office, neglected to require such proof, and connived at its exclusion; on which account, as well as on account of divers other malfeasances in office, the said judge has been impeached and removed.

(Signed,) SCHMIDT, *of counsel.*

And afterwards, to wit, on the 2nd day of May, 1844, the following entry was made of record:

Chas. Diamond, vs. F. H. Sommers. } No. 1,231.

On motion of P. Soule, esq., ordered, that this case be set for trial on the exceptions filed for to-morrow, at 9 o'clock, A. M.

And on the 3d day of May, 1844, the following was entered:

C. Diamond, vs. F. H. Sommers. } No. 1,231.

The trial of the exceptions taken by defendant came on this day, G. Schmidt, esq., for the pl'ff, and Messrs. Soulé, Slidell & Walker, appearing for the defendant, whereupon, after considerable progress, the case was postponed until to-morrow at 9 o'clock, A. M.

And afterwards, on the 4th day of May, 1844, the following was entered:

C. Diamond, vs. F. H. Sommers. } No. 1,231.

The trial of this cause, upon the exceptions filed, was this day resumed before the court, whereupon the evidence and argument of counsel being closed, the court took time to consider.

And on the 6th day of May, 1844, the following was entered of record:

Charles H. Diamond, vs. Frederick H. Sommers. } No. 1,231.

Upon the trial of this case, the following questions arose, on which the judges were opposed in opinion :

First. Is the certificate, of which the following is a copy, sufficient evidence of citizenship?

" UNITED STATES OF AMERICA :

" The State of Louisiana, parish of Jefferson, city court of the city of Lafayette, to all to whom these presents may come, greeting :

" Whereas, at the city court of the city of Lafayette, held in the city " of Lafayette, this fourth day of September, anno domini one thousand " eight hundred and forty-one, and in the sixty-sixth year of the inde- " pendence of the United States of America, Frederick Hilmer Som- " mers, late of the kingdom of Hanover, came and appeared in said " court, and made application to be made a citizen of the United States " of America, and having complied with all the conditions and requi- " sites of the acts of Congress, in such case made and provided, for esta- " blishing an uniform rule of naturalization, and the oath to support the " Constitution of the United States of America, and to renounce all al- " legiance, and to every foreign prince, potentate, state or sovereignty, " whatever, being administered unto him in open court—present, the " honorable B. C. Elliott, judge of said court, he, the said Frederick H. " Sommers is by virtue thereof, and the premises, declared and enrolled " a citizen of the United States.

" In testimony whereof I have hereunto affixed the seal of said court, { Seal of the city court of Lafayette. } " at the city of Lafayette, this fourth day of September, in " the year of our Lord one thousand eight hundred and " forty-one, and the sixty-sixth of the independence of the " United States of America.

(Signed,) A. PHELPS, *Clerk*.

Second. If the certificate is insufficient, because the said Frederick H. Summers does not appear to have renounced all allegiance to the King of Hanover, whose subject he had been, then can this court take notice of, and receive the following oath of allegiance taken by said Summers, before the clerk of said city court, as part of said certificate?

THE STATE OF LOUISIANA,
City court of Lafayette :

I, Frederick Hilmer Sommers, do solemnly swear that I will support the Constitution of the United States, and that I do absolutely and entirely renounce all allegiance to every foreign prince, potentate, state or sovereignty, whatever, and particularly to the King of Hanover. So help me God.

(Signed,) FREDERICK HILMER SOMMERS.

Sworn to and subscribed before me, this 4th September, 1841.
(Signed,) A. PHELPS, *Clerk*.

And also the following affidavit of John Beatson and Daniel Foose, as evidence of the bona fide intention of the said Sommers to become a citizen of the United States? And also as sufficient evidence of his residence in Louisiana, and of his good character?

Personally appeared before me, Daniel Foose and John Beatson, who being duly sworn, depose and say, that it is to their knowledge that F. H. Sommers arrived in the United States in the year of our Lord 1825, then a minor under the age of eighteen years; that he has ever since *rendered* in the State of Louisiana; that he is a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, and that it has been, bona fide, his intention, for the last five years, to become a citizen of the United States.

(Signed,) JOHN BEATSON,
DANIEL FOOSE.

Sworn to and subscribed before me, this 4th September, 1841.
(Signed,) A. PHELPS, *Clerk*.

Third. Is it necessary there should have been a record kept of the whole proceedings in said city court, and that the judgment of the court should have been pronounced upon the right of the said Frederick H. Summers to become a citizen of the United States, and that the certificate of nauralization should have been a true transcript of such record and judgment?

Fourth. Had the said city court power and jurisdiction under the Constitution and laws of the United States to naturalize aliens and to grant certificates thereof?

It is ordered, that the foregoing points be certified to the Supreme Court of the United States for their decision and judgment thereon.

CLERK'S OFFICE, UNITED STATES CIRCUIT COURT,
Fifth circuit and eastern district of Louisiana.

I, Duncan N. Hennen, clerk of the circuit court of the United States for the fifth judicial circuit, in and for the eastern district of Louisiana, do hereby certify, that the foregoing eight pages and a half contain a full, faithful, and true transcript of the record and proceedings of the case of Charles Diamond vs. Frederick H. Sommers, No. 1,231, so far as the same now remain on file in the said court.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at the city of New Orleans, this 14th [L. S.] day of September, A. D. 1844, and 69th year of the independence of the United States.

For DUNCAN N. HENNEN, *Clerk*.
J. Q. A. HOIT, *Deputy clerk*.